

Upper Platte River Basin Water Management Plan – Single Planning Group Meeting #12 Minutes

Project: Upper Platte River Basin Water Management Plan – Single Planning Group

Subject: Meeting #12

Date: Wednesday, September 19, 2018 from 10:30 a.m. to 3:00 p.m.

Location: Holiday Inn Express & Suites, North Platte, NE

- I. **Administration:** Stephanie White, HDR, opened the meeting at 10:37 a.m. CT. She reminded the group that all districts in the basin have begun the IMP process. Stephanie referenced the handouts, which include the agenda, a copy of the slides, a draft copy of goals and objectives thus far, and a table of contents. She reminded the group of the water management planning values.
 1. **Today's meeting will offer a working lunch**
 2. **This is an Open Meeting:** Stephanie stated the meeting is open and notices were published in five newspapers. She pointed out the copy of the open meetings act in the room.
 3. **Review of Decision-Making Process:** She reminded the group of the decision-making process in which the goal is consensus, if not, a majority. She stated if a majority is not reached, NeDNR and the NRDs will work together to solve disputes and to create a final plan.
 4. **May Meeting Recap:** Stephanie reviewed what was completed in May and noted that the group will be able to see a reflection of the discussion at the last meeting in updates to the plan, and specifically in Goal #1.

- II. **2nd Increment Review & Consensus:** Stephanie stated that this process was initiated in 2015 and that today is the 12th stakeholder meeting, and discussed the collaboration effort that included stakeholders, alternates, regular participants, NeDNR, and NRDs. By April of 2019, the NRDs and NeDNR will begin the process of adopting a basin-wide plan, which will require a public hearing. The first annual meeting for the 2nd increment basin-wide plan will happen in the summer of 2020. In 2026, planning for the 3rd increment of the Upper Platte basin-wide plan will be initiated. She noted that all the individual IMPs currently in progress must be consistent with the basin-wide plan.

Jennifer Schellpeper (NeDNR) stated that in addition, there have been many small group meetings between NeDNR, NRDs, and some stakeholders over the course of the last few months regarding the draft plan.

Stephanie took roll and noted the number of voters in the room (24 primary voters in attendance today). If there is a goal that the group is willing to take as is, the group will not spend time talking about it today. Each voting member used previously provided red, yellow, and green cards to represent their votes for each goal.

Goal #5: Keep the Upper Platte Basin-Wide Plan current and keep stakeholders informed.

- Vote on Goal #5:

- **Green: 23, Yellow: 0, Red: 1**
- Will revisit discuss Goal #5 if there is time at the end of the meeting

Goal #4: Work cooperatively to identify and investigate disputes between groundwater users and surface water appropriators and, if determined appropriate, implement management solutions to address such issues.

- Vote on Goal #4:
 - **Green: 24, Yellow: 0, Red: 0**

Goal #3: Partner with municipalities and industries to maximize conservation and water use efficiency.

- Vote on Goal #3:
 - **Green: 20, Yellow: 4, Red: 0**
 - Will revisit Goal #3

Goal #2: Prevent or mitigate human-induced reductions in the flow of a river or stream that would cause non-compliance with an interstate compact or decree or other formal state contract or agreement.

- Vote on Goal #2:
 - **Green: 21, Yellow: 2, Red: 1**

Goal #1: Incrementally achieve and sustain a fully appropriated condition while maintaining economic viability, social and environmental health, safety, and welfare of the basin

- Vote on Goal #1:
 - **Green: 12, Yellow: 9, Red: 3**
- Stephanie noted Goal #1 includes the most new content (objectives and action items) to be discussed, and stated some stakeholders have submitted content for this goal.. Stephanie counted a vote on just the goal itself (not including objectives and action items) as a formality, since it hasn't changed since the last meeting.
 - **Green: 22, Yellow: 2, Red: 0**
- Stakeholder comment:
 - Questioning whether or not the basin is already fully appropriated (FA) and suggestion that a simpler definition of FA be decided upon. We should recognize that water is reusable and should also include 'water 101' in this plan.
- Stakeholder asked for a vote on his proposal that the basin-wide plan indicate that the Upper Platte Basin is already FA:
 - Green: 2, Yellow: 10, Red: 11
- Summary of discussion on proposed **Goal 1** and stakeholder's FA suggestion:
 - Discussion on whether the concepts that the stakeholders are currently asking for are satisfactorily addressed in the basin-wide plan. A stakeholder stated that they agree that mitigation should be a focus. A stakeholder pointed out the conflict between the eastern and western portions of the basin, and that recognizing the basin as FA could be a way to resolve this. The plan does not specifically include "water 101" but there is a lot of information about the hydrology of the basin and the variability of supplies. A stakeholder stated that they would like the plan to recognize that crop production can be a reusable source of water, and that the plan needs to focus on the future instead of water use for the current generation. The stakeholder is not suggesting any particular change to the plan, but a goal of simplicity, flexibility, and taxpayer friendliness. Another stakeholder asked if there had been a decision between overappropriated (OA) and FA, and noted that the wording says "current", not

OA. NeDNR pointed out that the language comes from statute, and that the plan is trying to balance statute language with the information needed to represent the current situation. When asked if the wording of OA would ever change, NeDNR responded that the words can't change, but the action in the plan can change; therefore, there needs to be a focus on action, and not wording. The action is focused on drought mitigation and developing a drought plan.

▪ Summary of discussion on **Table 1.1.1: First Increment Robust Review Results Summary**

- NeDNR is still working on the final numbers, but there has not been significant change from the preliminary data presented in January. The table is blank because the data has not been finalized yet. The data will continue to be updated throughout the next increment. A stakeholder expressed concern that the information takes so long to update. Another stakeholder stated that they felt uncomfortable voting without adequate information and would like the stakeholders to be better informed. Another stakeholder expressed concern with wasting time on the tables without numbers. NeDNR asked whether or not presentation of final numbers would change stakeholder agreement on goals or objectives; a stakeholder responded that it will cause stakeholders to vote 'no' due to lack of information. Another stakeholder later reiterated this point. NeDNR stated that the numbers will be in the table before the public meetings and hearing, and that there will be many opportunities to provide input later in the process. The initial numbers from the robust review will be in the table by the time each NRD has to adopt the plan.
- A stakeholder asked if there is flexibility in the basin-wide plan to remove regulations if the updated numbers show that the set goals have been exceeded. Another stakeholder stated that it would be up to the NRD's board of directors.
- A stakeholder suggested that the basin-wide plan should state what happens when the basin becomes FA, and NeDNR clarified that the plan says once the basin becomes FA, it must maintain that condition.
- A stakeholder pointed out that the regulations are all on the western part of the state, and asked where the "saved" water goes. It was noted that the regulations in the western NRDs are not articulated in this plan; they are part of the individual IMPs. Statute says we are to protect existing users, but each NRD has the ability to choose management actions in order to reach that goal. A stakeholder reminded the group that statute is where a lot of the wording and requirements are coming from, and that they are trying to provide as much flexibility as possible.
- A stakeholder asked why the NRDs are at different points; some have met their goals while others have not. NeDNR responded that first increment goals were met by every NRD, and that this group is planning for the second increment.
- A stakeholder expressed confusion between positive and negative numbers because negative numbers indicate a positive result. Stephanie suggested that could relate to Goal #5 on how to keep stakeholders better informed and how NeDNR and the NRDs can help the public better understand.
- A stakeholder asked if there is something in the figures to recognize lost value of using and reusing water. NeDNR referenced the section of the plan that talks about use of best available science. Stephanie said that the plan does not state what the best available science is, simply that it is being used.

- A stakeholder pointed out that the group is not adopting the plan, but approving the format, and proper information will be provided once finalized. The group should focus on providing NRDs and NeDNR the information that they need to implement management within the basin.
- Another stakeholder asked for a vote on whether the basin is FA or not. Stephanie called for the vote on whether or not the basin is FA (Green: FA, Red: Not FA):
Red: 14, majority

Goal #2: Prevent or mitigate human-induced reductions in the flow of a river or stream that would cause non-compliance with an interstate compact or decree or other formal state contract or agreement.

- Summary of discussion on **Goal #2:**
 - A stakeholder questioned the definition of environmental health and expressed interest in seeing water quality reporting becoming part of an action item in the plan. A stakeholder said environmental health includes water quality, so it is indirectly included in the plan. Including statistics or requiring annual reporting about water quality in the plan would be confusing because NeDNR has no jurisdiction of water quality issues. The group came to the conclusion that these water quality metrics are already available through other state and federal agencies.
 - Vote to include 10-year report of water quality metrics in the basin-wide plan in Goal #2:
 - Green: 2, Yellow: 0, Red: 21, Abstained: 1
 - Vote on the approval of Goal #2:
 - **Green: 23, Yellow: 0, Red: 1**

Goal #3: Partner with municipalities and industries to maximize conservation and water use efficiency.

- Summary of discussion on **Goal #3:**
 - NeDNR discussed updates to Objective 3.3 and associated action items. Changes were made following stakeholder conversations and individual IMP stakeholder meeting discussions on municipal/industrial uses and setting baselines (allocations). According to statute, NRDs are responsible for offsetting new uses over an established baseline prior to 2026, but after 2026, an NRD can require the municipality or industry to offset any uses above the baseline. A stakeholder asked if NRDs can establish new baselines that are higher than what they were before and how the baselines are calculated. NeDNR responded that for municipalities in 2026, the amount is either what they had in a permit or their greatest annual use up to 2026. Lyndon Vogt, CPNRD Manager, said the NRDs are responsible for offsetting anything above 1997 use. The NRDs will determine if/how they will offset for municipal and industrial uses in their IMPs.
 - Vote to approve Goal #3:
 - **Green: 23, Yellow: 0, Red: 1**

Goal #1: Incrementally achieve and sustain a fully appropriated condition while maintaining economic viability, social and environmental health, safety, and welfare of the basin

- Summary of discussion on Goal #1 (**Action Item 1.3.4**)
 - Drought contingency plan – a new component in the basin-wide plan
 - Stephanie called for an early vote to see if stakeholders would approve Action Item 1.3.4 as is, or if there needs to be a discussion

- Green: 18, Yellow: 0, Red: 6
- Suggestions from stakeholders for the drought plan action item (1.3.4)
 - A stakeholder suggested adding a time period in the action item to develop the drought plan in 3 or 5 years.
 - Add a new action item (1.3.4.5) that would say “to implement the basin drought contingency plan during times of drought.”
 - A stakeholder said annual review in the middle of the drought is not good enough and asked how to make sure it is going to happen. NeDNR responded that once a drought plan is developed, it will be in the basin-wide plan, which is reviewed annually. A stakeholder said 1.3.4.4 reflects that.
 - A stakeholder suggested adding a more concrete requirement of something that is done, other than education, etc. They would like to see more water available to impacted users, more stakeholder involvement in identifying solutions, and specific solutions developed with stakeholders. Noted that when this group ends, there isn’t a “stakeholder group”, but “affected water users” who will be included in these drought planning conversations. This language is included, rather than “stakeholders” to avoid confusion. Example: Action items under Objective 1.3 references “impacted water users.”
 - A stakeholder asked if managing storage water is the only mitigation action that the group wants to mention in 1.3.4.2? A stakeholder asked if someone didn’t use their full allocation this year, would there be a reward during drought for those who are preparing before times of drought? NeDNR suggested a drought planning workshop could address this and a drought plan would recognize this. Another stakeholder suggested deleting the example of “management of storage water” in Action Item 1.3.4.2 to strengthen language and add clarity
- Votes on 1.3.4, with changes agreed on today
 - **Green: 23, Yellow: 0, Red: 1**
- Summary of discussion on Goal #1 (**Action item 1.3.3**):
 - A stakeholder asked how the water market works and expressed concern about differences in selling water at different ends of the state. A stakeholder suggested new action item or working that emphasizes implementation.
 - Vote to accept Action Item 1.3.3:
 - **Green: 23, Yellow: 0, Red: 1**
- Summary of discussion on Goal #1 (**Objective 1.4**):
 - A stakeholder asked for clarification on getting back to FA if the basin is declared OA now. NeDNR responded that under the law, in terms of changing the title from OA to FA, there is an interpretation that it can’t be done. However, that is not the same thing as saying we can’t take the actions we agree would be beneficial for the basin because the plan anticipates that we gate back to FA and maintain it. This objective is focused on the technical analysis used to evaluate getting back to the FA condition. The wording is based on statute.
 - Vote to accept Action Item 1.4:
 - **Green: 24, Yellow: 0, Red: 0**
- Summary of discussion on Goal #1 (**Objective 1.5**):

- A stakeholder expressed concern with the cost of this plan from a tax point of view and would like to reevaluate cost and simplicity of the plan; is there any way to consider the taxpayer in this plan? A stakeholder suggested using a term like “cost-effective”. Stephanie suggested “use available funds and actively pursue new funding opportunities to cost effectively offset depletions...”
- Vote to accept Objective 1.5, with the wording discussed above?
 - **Green: 24, Yellow: 0, Red: 0**
- Summary of discussion on Goal #1 (**Objective 1.3**)
 - John Engel, HDR: Discussed broad context of Objective 1.3 that would help stakeholders understand the intent of the goal overall. Noted how these Action Items can help to answer some questions that came up in earlier discussion.
 - Vote on Action Item 1.3.1:
 - **Green: 24, Yellow: 0, Red: 0**
 - Votes to accept Action Item 1.3.2:
 - **Green: 24, Yellow: 0, Red: 0**
- Summary of discussion on Goal #1 (**Objective 1.6**)
 - Discussed that transfers of certified acres across NRD boundaries would be at the NRDs’ discretion.
 - Vote to accept Objective 1.6:
 - **Green: 24, Yellow: 0, Red: 0**
- Summary of discussion on Goal #1 (**Objective 1.1**):
 - A stakeholder said that the plan should mention that flexibility is necessary if this is about maintaining achievements. NeDNR noted in the text under the Action Item that there is wording that references flexibility and that progress from the first increment needs to be maintained. A stakeholder asked if there should be a date on which the basin has to reach 1997 levels. A stakeholder pointed out that the next Action Item says “levels will be met within this increment.” A stakeholder said that Action Item 1.1.1 says there is likely going to be funding changes, and asked if it is possible to maintain the levels met in the first increment if that happens. Stephanie suggested adding wording such as “insofar as possible” or “as fiscally possible.” A stakeholder asked, in the case of an NRD that exceeded their requirements for the first increment, if that makes up for progress needed in the second increment. NeDNR responded that it is part of getting back to a fully appropriated condition. A stakeholder voiced concerns regarding cost of having to maintain the condition. A stakeholder suggested the wording of “maintaining what has been achieved” be revised to “system viability must be maintained, but flexibility is essential.” Stephanie pointed out that changes the intent. A stakeholder had issue with the word “efforts” and asked it to be changed to “progress.” NeDNR pointed out that “insofar as possible” could be an excuse not to do anything. A stakeholder further voiced concerns about being able to maintain what has been achieved with limited budgets. NeDNR asked if introducing “cost effective” or “cost benefit” to 1.1.1 would help.
 - Vote to accept Objective 1.1, with modifications to include ‘cost benefit analysis,’ ‘flexibility,’ and ‘progress.’
 - **Green: 24, Yellow: 0, Red: 0**
- Summary of discussion on Goal #1 (**Objective 1.2**):

- A stakeholder pointed out that the plan doesn't recognize the airborne side of the water 101 equation and that water is reusable, and asked if it needs to be considered. NeDNR said their models consider evapotranspiration and precipitation. A stakeholder asked if the loss of value due to using and reusing water needs to be considered. NeDNR discussed how the models measure everything and take the value of using and reusing water into account.
- Vote to accept Objective 1.2:
 - **Green: 24, Yellow: 0, Red: 0**
- **Goal #5:**
 - Vote to accept Goal #5:
 - **Green: 24, Yellow: 0, Red: 0**
- Stephanie asked the group if they felt comfortable with Goal #1 overall, since objectives were discussed out of order.
 - **Stakeholder:** Referencing Action Item 1.3.3.3, on markets. "How can, during drought, some people be marketing in one place, while someone's allocating in another?" Does not feel comfortable with it, but stated that there is no answer. "It will happen again and again."
 - **Stakeholder:** Discussed that there will still be individual NRD control on marketing – local control.
 - **Stephanie:** The requirement in this section is only for a study.
- Stephanie offered stakeholders time to think and called for public comment.

III. Next Steps

IV. Public Comment:

- Jason Farnsworth, PRRIP: Thanked the group for inviting and allowing the public to listen and learn from the meeting. Referenced the conversation on "bang for your buck" and wanted to remind the group that this conversation is going on in other places too. PRRIP has brought a lot of federal money into Nebraska and it has been shown that there are incentives to participating in PRRIP projects. Farnsworth invited questions from stakeholders regarding how the program is helping these efforts financially.
- Stephanie called for a vote for the whole plan
 - (**Stakeholder:** Stated they wanted to change their vote from 'Red' to 'Green' on Action Items 1.3.3 and 1.3.4.)
- Vote on whole plan:
 - **Green: 22, Yellow: 1, Red: 1**

The meeting was adjourned at 3:05 p.m. CT.